

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6811

Investigation into complaint of Kenneth Schramm vs.	)	Hearing at
Frontiervision Operating Partners, L.P., in re public	)	Montpelier, Vermont
access issues	)	April 4, 2003

Order entered: 9/17/2003

**I. INTRODUCTION**

This docket concerns the funding and operation of a Morristown, Vermont, public access channel, as well as accounting for associated funds. This Proposed Decision recommends that the Public Service Board dismiss the petitioner's claims without prejudice and close this docket.

**II. PROCEDURAL HISTORY**

This docket was commenced on February 11, 2003, to consider claims presented by Kenneth Schramm. Petitioner Kenneth Schramm has appeared *pro se*. At all times he has represented himself as a resident of Morristown, Vermont. On some occasions he has appeared on behalf of Lamoille Valley Community TV, an organization that he has also described as his own business name. FrontierVision Operating Partners, L.P., d/b/a Adelphia Frontiervision Operating Partners and d/b/a Adelphia Frontiervision Partners ("Adelphia"), is the cable operator serving the area affected, and has appeared here represented by Richard Saudek, Esq., of Cheney, Brock & Saudek, P.C.

A prehearing conference was held on March 12, 2003. A scheduling order was issued on March 14. It required Petitioner to file a list of the issues he wished to pursue and it scheduled technical hearings for early August. Two rounds of discovery were also anticipated.

Petitioner filed three motions for preliminary injunction: (1) to require Adelphia to turn over to Petitioner all receipts for all equipment and work done by any contractor pertaining to Morristown's Public Access Fund; (2) to require that Adelphia halt negotiations for public access

with any group other than Lamoille Valley Community TV; and (3) to appoint Mike Hendon as the Morristown Public Access Coordinator. An evidentiary hearing was held on April 4, 2003. Mr. Schramm introduced numerous exhibits and testified at length. Adelphia offered brief testimony. Adelphia's witness established that Adelphia had not received any application for the selection of a public access administrative entity referred to in Board Rule 8.430.

Before a ruling was issued on those motions, on April 17, Petitioner filed a motion to alter the schedule. He asked, for health reasons, for an extension of time. He offered no alternative schedule, but advised that he "may" be able to "continue in July with the second round of discovery." Adelphia responded on April 23, asserting that it was complying in all respects with the Board's rule and suggesting that it might soon file a motion to dismiss. Adelphia did not oppose a delay in the established schedule. Adelphia did, however, suggest that the Board dismiss the case *sua sponte*, without prejudice to refile. During the pendency of this docket, Adelphia received a PEG access application from Green Mountain Access TV.

On or about April 30, 2003, Petitioner filed a second motion to expand time in the schedule. This motion declared that Lamoille Valley Community TV and the Green Mountain Technology Center had "effectively merged" and that a period of 60 days was needed to conclude negotiations with Adelphia. In this motion, Petitioner also withdrew two of his three requests for preliminary injunction, those seeking a halt to negotiations and seeking appointment of Mike Hendon. Attached to this motion was an "agreement" between Petitioner and Terry Bailey, representing Green Mountain Technology Center. In the agreement, Petitioner agreed that Green Mountain Technology Center would "host the [PEG] entity" under stated conditions. On the same day Petitioner also filed a notice of withdrawal of his appearance. It stated that due to poor health Petitioner would neither represent himself nor Lamoille Valley Community TV.<sup>1</sup>

Then on May 6, Petitioner filed another document asserting that the docket should stay open and asking particularly that I rule on his pending request that past receipts be turned over to Petitioner so that he could continue to investigate his concern regarding the handling of PEG equipment by Adelphia and/or its predecessor in interest.

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1. Petitioner also filed a paper that purported to withdraw his "withdrawal of appearance motion and notice."

On May 8, Adelphia filed an opposition to the May 6 motion. Adelphia asserted that the motion was premature because there had been no valid PEG application. Respondent also asserted that the case should be dismissed to allow it to comply with Rule 8.400. Adelphia asserted that Petitioner still had not filed a PEG application with it under Rule 8.400.

A status conference was held on May 29, 2003.

### **III. FINDINGS**

1. Adelphia has received a PEG access application from Green Mountain Access TV and is processing that application. Tr. 5/29/03 at 9-10 (Saudek).
2. Petitioner has not filed a PEG access application with Adelphia, and he intends not to file such an application. Tr. 5/29/03 at 6 (Schramm).
3. Adelphia has made a commitment to provide a "live two-way cable feed" for Morristown. Tr. 5/29/03 at 25-27 (Franz).
4. Adelphia has consulted with the Morristown Board of Selectmen concerning their desires for PEG access in Morristown, and plans to do so again in the near future. Tr. 5/29/03 at 24 (Ames), 25 (Franz).

### **IV. DISCUSSION AND CONCLUSION**

PEG access is controlled by Rule 8.400. The primary mechanism described in the rule is that the cable provider, here Adelphia, must select a PEG provider from among those who apply. Petitioner originally sought preliminary relief here that would have barred Adelphia from taking certain actions concerning its selection of a provider. But Green Mountain has an application pending with Adelphia. Petitioner has no application pending, nor does he anticipate filing an application. The normal time to review a cable provider's selection decision is after that decision has been made. When Adelphia selects an entity to provide PEG access, Petitioner can then seek Board review and can at that time raise any or all valid objections to Adelphia's process and its decision.

While it may be possible to envision when it would be appropriate to anticipate a cable provider's selection of a PEG access entity, the facts here do not justify such advance restraint.

There is no evidence that Green Mountain's application is a sham, or that Adelphia's consideration has been unduly prolonged. Adelphia has been in contact with appropriate parties, including the Morristown Selectmen. Petitioner has not shown that Adelphia's consideration is biased or highly likely to produce a result that is inconsistent with the public interest. In short, Petitioner has not shown any extraordinary circumstances that might justify early intervention.

On the contrary, this docket's mere existence may allow some involved in the selection decision to infer that the Public Service Board prefers the appointment of one applicant over another. Persons involved may also infer from the pendency of a claim here that the Board has a preference as to how Adelphia should resolve pending equipment and support issues. While nothing of the sort is true, closing this docket will avoid all risk of such inferences.

Petitioner has made many claims in this docket regarding past orders issued by the Board, regarding equipment and funds issued by Adelphia or its predecessor. Petitioner should present those claims to Adelphia, and Adelphia should rule on them in a timely and clear manner that will allow meaningful review by the Public Service Board, if such review is sought.

It is a simple matter to dismiss two of Petitioner's three claims for preliminary relief. Petitioner himself has withdrawn his requests to halt negotiations and to appoint Mike Hendon. Furthermore, there is, according to the record, no application for a PEG access operator filed by the Petitioner or any entity with which he is associated.

The one remaining preliminary relief matter involved the status of equipment purchased and funds identified from prior years of PEG operations. Petitioner has asserted that Adelphia should account for all equipment that its predecessor in interest identified for PEG purposes in the Morristown area. I neither accept nor reject that theory here. However, I do conclude that the issue is not timely. Even petitioner has said that this issue is subsidiary to the main one of who will be the next administrative entity for PEG access in the Morristown area. At the May status conference, petitioner admitted that if the appointment process concludes satisfactorily, he may be willing to waive this claim.

Finally, it appears that Petitioner has fundamentally altered his goals in this docket. At the May 29 status conference, petitioner sought an entirely new form of relief. He asked for an

order mandating the establishment of a "satellite studio" in Morristown.<sup>2</sup> Pursuant to my direction, Petitioner early on established the issues he wished to pursue in this docket. This new request is outside the scope of Petitioner's issue list. Since Petitioner's only current objective is outside the legitimate scope of this docket, the docket should be closed without prejudice to refiling.

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the above findings of fact and conclusions of law to the Board.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 5<sup>th</sup> day of September, 2003.

s/John D. Burke

John Burke, Esq.  
Hearing Officer

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2. A satellite studio would include audio and video "feeds," but would also consist of facilities and equipment. Adelphia has made a commitment only for "feeds."

## **V. BOARD DISCUSSION**

Only Kenneth Schramm commented on the Proposal for Decision.

Mr. Schramm distilled his original complaint into three requests for relief. He then withdrew two of them, to wit: (1) his request to halt negotiation with a PEG operator; and (2) in the interim, to appoint Mike Hendon as operator. We are left with only his third area of concern: accounting requests.

Equipment that appears to be fifteen (15) years old if it exists at all, previously purchased for local use, would presumably be of little present value.<sup>3</sup> The equipment turned over and the initial accounting given to the new PEG operator of existing funds collected by Adelphia from Morrisville area subscribers for public access operations should adequately address this third area of Mr. Schramm's concerns. If these disclosures are not adequate, the dismissal here is without prejudice and Mr. Schramm may revisit this area with a new filing.

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3. The old Latin phrase is applicable here: "de minimus non curat lex" (the law does not concern itself with trifles).

### VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Hearing Officer's Findings and Conclusion are adopted.
2. This docket shall be closed, without prejudice.

Dated at Montpelier, Vermont, this 17<sup>th</sup> day of September, 2003.

s/Michael H. Dworkin	)	
	)	
	)	
s/David C. Coen	)	
	)	
	)	
s/John D. Burke	)	

PUBLIC SERVICE

BOARD

OF VERMONT

OFFICE OF THE CLERK

FILED: September 17, 2003

ATTEST: s/Susan M. Hudson

Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*